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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Olivier Pelletier

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EXAMINER

ANDERSON, FOLASHADE

ART UNIT

PAPER NUMBER

3623

MAIL DATE

DELIVERY MODE

02/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/615,157

**Applicant(s)**

PELLETIER, OLIVIER

**Examiner**

FOLASHADE ANDERSON

**Art Unit**

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, 8-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 2, 5, 7, 18 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This final office action is in response to Applicant's submission filed on December 1, 2008. Currently, claims 1-20 are pending. Claims 1, 2, 6, and 13 have been amended. Claims 18-20 are newly added.

### ***Response to Amendment***

2. Applicant's amendments to independent claim 1 are sufficient to overcome the 35 U.S.C. 101 rejection raised in the previous office action.

### ***Response to Arguments***

3. Applicant's arguments, with respect to 35 USC § 103 have been fully considered and are not persuasive. Applicant argues (A) Juergens does not disclose "automatically calculating weighting coefficients constituting said profile and respectively affected to said sensors measurements, by successive approximation of sets of weighting coefficients leading to minimizing the sum of quadratic errors over the set of satisfaction notes" with respect to claims 1 and 12, (see remarks p. 9 and 11 respectively) and (B) Hillier does not disclose determining "errors over the set of satisfaction notes," with respect to claims 1 and 12, (see remarks p. 10 and 11 respectively)

In response to Applicant's **argument (A)** the Examiner respectfully disagrees and notes that Juergens is not used to teach "minimizing the sum of quadratic errors over the set of satisfaction notes." The functional steps recited in claims 1 and 12 are

the storing of data and calculating weighting coefficients for a profile. These steps are very old and well known in the art in addition to the art previously cited in the last office action with respect to Juergens and Hiller. Further to show that the claimed limitations were old and well known in the art see at least Huret (US 7,103,592 B2) at col. 7, lines 17-35, and Hicken et al (US Pub. 2005/0038819) at par. 0095.

Further the courts have well stated that where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). In the recited limitation the data stored and used for the calculations step is irrelevant, since the outcome of a calculated weighted coefficient is old and well known in the art. The result of the recited claim is not either a new or non-obvious result of an old method, when the claim recites using an old composition or structure and the "use" is directed to a result or property of that composition or structure, then the claim is anticipated. *In re May*, 574 F.2d 1082, 1090, 197 USPQ 601, 607 (CCPA 1978).

Lastly, without stating the new or non-obvious method step used to obtain the old and well known result of a calculated weighted coefficient then a simple substitution of one known element for another to obtain predictable results is not patentable. *KSR International Co. v. Teleflex Inc.* (KSR), 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

In response to Applicant's **argument (B)** the Examiner respectfully disagrees. Hiller teaches a method for calculating errors (p. 500-02, 588-90 and 820-26). The limitation of "over the set of satisfaction note" is being interpreted by the Examiner as a

statement of intended use. As such the limitation is not given any patentable weight in keeping with the guidelines of MPEP 7.37.09: a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### ***Claim Objections***

4. **Claims 2, 5, 7, 18, and 20** are objected to because they are dependent upon a rejected base claim, but may be allowable, if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 6, 8-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995).

In regards to **claim 1**, Juergens teaches

- storing in a computer for each of a set of products chosen among products for which a database (fig. 10A) includes smell or taste prints constituted by a set of measurements given by smell or taste electronic sensors (col. 4, lines 52- 61; official notice is taken that smell and electronic sensors were old and well known tools used in laboratory measurements), a satisfaction note rating (SN) given by the user (col. 10, lines 56-66 where preference score is similar to the satisfaction note rating); and
- automatically calculating by the computer weighting coefficients constituting said profile and respectively affected to said sensors measurements, by successive approximation of sets of weighting coefficients (col. 11, lines 44-68 and col.12, lines 1-5).

Juergens does not expressly teach

- minimizing the sum of the quadratic errors over the set of satisfaction notes.

Hillier teaches minimizing the sum of the quadratic errors over the set of satisfaction notes (pgs 500-502, 588-590 and 820-826) in an analogous art of operations research for the purpose of finding the best solution for the problem under consideration (pg. 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the teachings of Hiller, to minimize the sum of the quadratic

errors, in the invention of Juergens because it would have allowed for a purer picture of the preferred user defined product.

In regards to **claim 3 and 17** Juergens teaches preference scores are on a scale of 0-10 (col. 4, lines 61-62) and satisfaction note rating (col. 9, lines 42-51). Juergens does not expressly teach that a satisfaction note rating is a value from 1 to 5 (col. 9, lines 42-51).

Official notice is taken it would have been obvious to one of ordinary skill in the art at the time the invention was made that the scale or weighting could have been in the range of any range including that of 1 to 5 or 1 to 3. Regardless of the magnitude of the scale or weighting factor the process steps are the same therefore the description as claimed is not distinguishable over the prior art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a range of 1 to 5 or 1 to 3 in the invention of Juergens to focus the user by reducing the number of preference options.

In regards to **claim 6 and 13** Juergens teaches

- estimating a rating for products for which the database includes the smell or taste prints, by applying the weighting coefficients to the scent or taste prints (col. 5-7); and
- selecting among the products, a subset on the basis of the estimated rating (col. 12, lines 59-64).

In regards to **claim 8** Juergens teaches which the product of said subset is selected for having an estimated rating close to the highest or lowest rating within a predetermined margin (col. 9, line 42-55).

In regards to **claim 9 and 15**, Juergens teaches which a predetermined number of products having the highest or lowest estimated rating constitutes said subset (col. 12, lines 19-25). Official notice is taken that one of ordinary skill in the art at the time the invention was made could have inversely added a subroutine to figure the lowest or least a likely to inform the user of the product which they are least likely to enjoy.

It would have been obvious to one of ordinary skill in the art at the time the invention was made include a subset of the estimate the lowest estimated rating in the invention of Juergens because it would serve as a list of least likely enjoyable products.

In regards to **claim 10 and 14**, Juergens teaches a method applied to perfumes selection, (col. 14, lines, 8-13).

In regards to **claim 11**, Juergens teaches a method applied to wines selection (col. 14, lines, 8-13).

In regards to **claim 12**, Juergens teaches:

- a database containing smell or taste prints of products constituted by a set of measurements given by smell or taste electronic sensors (fig. 10A;
- a memory element for storing a user rating of each of a set of products chosen among the products contained in said database ( col.12, line 65-68 and col. 13, lines 1-5);



- a calculator of weighting coefficients constituting said profile and respectively affected to said sensors, by successive approximation of sets of weighting coefficients ((col. 11, lines 44-68 and col.12, lines 1-5).

Juergens does not expressly teaches

- minimizing the sum of the quadratic errors over the set of rating.

Hillier teaches minimizing the sum of the quadratic errors over the set of satisfaction notes (pgs 500-502 and 588-590) in an analogous art of operations research for the purpose of finding the best solution for the problem under consideration (pg. 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the teachings of Hiller, to minimize the sum of the quadratic errors, in the invention of Juergens because it would have allowed for a purer picture of the preferred user defined product

In regards to **claim 19**, which is a combination of claims 12 and 13, is reject for the same reason given with respect to claims 12 and 13.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) as applied to claim 1 and further in view of Glaser et al (US Patent 7,003, 515).

In regards to **claim 4** Juergens dose teach modifying the rating scores, base on a particular wine (col. 10, lines 59-68 and col. 11, lines 1-7). However Juergens does

not expressly teach receiving from the user an additional rating for an additional product selected, on the basis of the already given ratings, as being the product for which the notation of the user will be the most relevant for the user profile.

Glaser teaches receiving from the user an additional rating for an additional product selected, on the basis of the already given ratings, as being the product for which the notation of the user will be the most relevant for the user profile (col. 4, lines 41-58), in the analogous art of creating music play list.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the teachings of Glaser, receiving from the user an additional rating for an additional product selected, on the basis of the already given ratings, as being the product for which the notation of the user will be the most relevant for the user profile, in the invention of Juergens because it allows consumers that have difficulty in finding product they like to find products based on their own taste (Glaser col. 4, lines 52-56).

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) as applied to claim 12 above and further in view of Yamafuji et al (US Patent 5,302,262).

In regards to **claim 16**, Juergens teaches wine samples being sent to laboratory for evaluation (col. 4, lines 23-24). Juergens does not expressly teach comprising a smell or taste electronic sensor.

Yamafuji teaches comprising a smell or taste electronic sensor (col. 3, lines 24-27) in an analogous art of taste sensing for the purpose of detecting taste of a plurality of similar samples (col. 3, lines 28-31).

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to use the teachings of Yamafuji, comprising a smell or taste electronic sensor, in the invention of Juergens to detect the taste of samples (col.3, lines 62-64).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Folashade Anderson/

Examiner, Art Unit 3623

/Jonathan G. Sterrett/

Primary Examiner, Art Unit 3623